

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 1:15-cr-113

Also 1:19-cv-341

- vs -

District Judge Susan J. Dlott

Magistrate Judge Michael R. Merz

LISTON WATSON,

Defendant.

:

SUPPLEMENT TO REPORT AND RECOMMENDATIONS

On May 7, 2020, the undersigned filed a Report and Recommendations recommending the dismissal of Watson's pending Motion to Vacate as supplemented (ECF No. 115). Watson's Eighth Ground for Relief asserts his convictions under 18 U.S.C. § 924(c) are unconstitutional as a result of *United States v. Davis*, 139 S. Ct. 2319 (2019), which holds 18 U.S.C. § 924(c)(3)(B)'s definition of a crime of violence is unconstitutionally vague. The Report concluded the two counts of violating 18 U.S.C. § 924(c) to which Watson pleaded guilty (Counts Two and Six of the indictment) charge Watson with committing an offense which is a crime of violence under the "elements" clause, § 924(c)(3)(A), not the "residual" clause, § 924(c)(3)(B) which *Davis* invalidated (Report, ECF No. 115, PageID 651).

On May 6, 2020, the Sixth Circuit decided *In re Wilkerson*, 2020 U.S. App. LEXIS 14511 (6th Cir. May 6, 2020). Wilkerson sought circuit court permission to file a second § 2255 motion

on the basis of *Davis*; like Watson, he had been convicted of violating 18 U.S.C. § 2213(a). The court held

[T]he holding in *Davis* has no effect on Wilkerson's convictions or sentence because § 2113(a) qualifies as a crime of violence under the use-of-force clause of 18 U.S.C. § 924(c)(3)(A). See *United States v. Henry*, 722 F. App'x 496, 500 (6th Cir. 2018), *cert. denied*, 139 S. Ct. 70, 202 L. Ed. 2d 47 (2018); see also *United States v. McBride*, 826 F.3d 293, 296 (6th Cir. 2016) (analyzing the use-of-force clause of USSG § 4B1.2(a)(1)).

2020 U.S. App. LEXIS at *2-3.

Wilkerson supports the Report's recommendation that Watson's Eighth Ground for Relief is without merit.

May 8, 2020.

s/ *Michael R. Merz*
United States Magistrate Judge